

Effective 3/28/2016

63G-6a-106 Procurement units with specific statutory procurement authority -- Independent procurement authority -- Authority of head of a procurement unit with independent procurement authority.

- (1) A procurement unit with procurement authority under the following provisions has independent procurement authority to the extent of the applicable provisions and for the procurement items specified in the applicable provisions:
 - (a) Title 53B, State System of Higher Education;
 - (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management;
 - (c) Title 67, Chapter 5, Attorney General;
 - (d) Title 72, Transportation Code; and
 - (e) Title 78A, Chapter 5, District Court.
- (2) Except as otherwise provided in Sections 63G-6a-105 and 63G-6a-107, a procurement unit shall conduct a procurement in accordance with this chapter.
- (3)
 - (a) The Department of Transportation may make rules governing the procurement of highway construction or improvement.
 - (b) The applicable rulemaking authority for a public transit district may make rules governing the procurement of a transit construction project or a transit improvement project.
- (4)
 - (a) A procurement unit listed in Subsection (4)(b) may, without the supervision, interference, oversight, control, or involvement of the division or the chief procurement officer, but in accordance with the requirements of this chapter:
 - (i) engage in a standard procurement process;
 - (ii) procure an item under an exception, as provided in this chapter, to the requirement to use a standard procurement process; or
 - (iii) otherwise engage in an act authorized or required by this chapter.
 - (b) The procurement units to which Subsection (4)(a) applies are:
 - (i) a legislative procurement unit;
 - (ii) a judicial procurement unit;
 - (iii) an educational procurement unit;
 - (iv) a local government procurement unit;
 - (v) a conservation district;
 - (vi) a local building authority;
 - (vii) a local district;
 - (viii) a public corporation;
 - (ix) a special service district;
 - (x) a public transit district; and
 - (xi) a procurement unit referred to in Subsection (1), to the extent authorized in Subsection (1).
 - (c) A procurement unit with independent procurement authority shall comply with the requirements of this chapter.
 - (d) Notwithstanding Subsection (4)(a), a procurement unit with independent procurement authority may agree in writing with the division to extend the authority of the division or the chief procurement officer to the procurement unit, as provided in the agreement.
 - (e) With respect to a procurement or contract over which the head of a procurement unit with independent procurement authority has authority, the head of the procurement unit with independent procurement authority may:

- (i) manage and supervise the procurement to ensure to the extent practicable that taxpayers receive the best value;
- (ii) prepare and issue standard specifications for procurement items;
- (iii) review contracts, coordinate contract compliance, conduct contract audits, and approve change orders;
- (iv) delegate duties and authority to an employee of the procurement unit, as the head of the procurement unit with independent procurement authority considers appropriate;
- (v) for the head of an executive branch procurement unit with independent procurement authority, coordinate with the Department of Technology Services, created in Section 63F-1-103, with respect to the procurement unit's procurement of information technology services;
- (vi) correct, amend, or cancel a procurement at any stage of the procurement process if the procurement is out of compliance with this chapter or a rule adopted by the applicable rulemaking authority;
- (vii) after consultation with, as applicable, the attorney general's office or the procurement unit's legal counsel, correct, amend, or cancel a contract at any time during the term of the contract if:
 - (A) the contract is out of compliance with this chapter or a board rule; and
 - (B) the head of the procurement unit with independent procurement authority determines that correcting, amending, or canceling the contract is in the best interest of the procurement unit; and
- (viii) attempt to resolve a contract dispute in coordination with the legal counsel of the procurement unit with independent procurement authority.
- (f) The head of a procurement unit with independent procurement authority serves as the protest officer for a protest involving the procurement unit.
- (g) If, at any time during the term of a contract awarded by a procurement unit with independent procurement authority, the head of the procurement unit determines that the contract is out of compliance with this chapter or applicable rules, the head of the procurement unit may correct or amend the contract to bring it into compliance or cancel the contract:
 - (i) if the head of the procurement unit determines that correcting, amending, or canceling the contract is in the best interest of the procurement unit; and
 - (ii) after consulting with legal counsel.
- (5)
 - (a) The attorney general may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer:
 - (i) retain outside counsel, subject to Section 67-5-33 if the attorney general retains outside counsel under a contingent fee contract, as defined in that section; or
 - (ii) procure litigation support services, including retaining an expert witness.
 - (b) A procurement unit with independent procurement authority that is not represented by the attorney general's office may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer:
 - (i) retain outside counsel; or
 - (ii) procure litigation support services, including retaining an expert witness.
- (6) The state auditor's office may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer, procure audit services.
- (7) The state treasurer may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer, procure:
 - (a) deposit services; and

(b) services related to issuing bonds.

Amended by Chapter 355, 2016 General Session